

Department of Labor and Industry  
Board of Personnel Appeals  
PO Box 201503  
Helena, MT 59620-1503  
(406) 444-2718

STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 9-2014

INTERNATIONAL UNION OF )  
OPERATING ENGINEERS, LOCAL 400, )  
Complainant, )  
-vs- )  
LINCOLN COUNTY, )  
Defendant. )

RECOMMENDED ORDER OF  
DEFERRAL

**I. Introduction**

On November 22, 2013, the International Union of Operating Engineers, Local 400, IUOE or Local 400, filed an unfair labor practice charge with the Board of Personnel Appeals alleging that Lincoln County, County, made a "unilateral change." Specifically the charge alleges that the County violated Article 7 of the collective bargaining agreement. Local 2 is represented in this matter by Craig Davis, assistant business manager. Lincoln County timely responded to the charge through its attorney, Daniel D. Johns. The County denied committing an unfair labor practice.

John Andrew was assigned by the Board to investigate the charge and has reviewed the information submitted by the parties and communicated with them as necessary in the course of the investigation.

**II. Background and Discussion**

The County and Local 400, are signatory to a bargaining agreement the terms of which are in effect until June 30, 2014. The agreement covers employees of Lincoln County employed in landfill operations in Libby and Eureka. The bargaining unit was certified by the Board of Personnel Appeals in 2005 and the bargaining relationship between the parties is a stable one. The instant charge arises in the Eureka landfill operation with the allegation being that the supervisor in Eureka, a position outside the bargaining unit, is performing bargaining unit work to a greater extent than contemplated in the bargaining agreement.

To process this complaint the Board of Personnel Appeals is called upon to determine the meaning of a provision of a non-expired contract that contains a provision calling for final

1 and binding arbitration as the ultimate mechanism to resolve grievances. In doing so the  
2 Board is further called upon to determine not only the meaning of the language in the  
3 agreement but also the intent of the parties in reaching that language. Although no  
4 grievances have been filed over the allegation contained in the unfair labor practice charge  
5 there is nothing to lead the investigator to believe a grievance could not be filed since the  
6 nature of the complaint appears to be an ongoing one and it does appear to be an issue  
7 within the four corners of the contract. Moreover, there are no allegations of discrimination  
8 or animus related to protected activities nor are there allegations that in some fashion  
9 Board intervention is needed to carry out the provisions of the bargaining agreement.  
10

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12 The Montana Supreme Court has approved the practice of the Board of Personnel  
13 Appeals using Federal Court and National Labor Relations Board precedent as guidelines  
14 in interpreting the Montana Collective Bargaining for Public Employees Act as the State  
15 act is so similar to the Federal Labor Management Relations Act, State ex rel. Board of  
16 Personnel Appeals v. District Court, 183 Mont 223, 598 P.2d 1117, 103 LRRM 2297;  
17 Teamster's Local Union No. 45 v. State ex rel. Board of Personnel Appeals, 195 Mont 272,  
18 635 P.2d 1310, 110 LRRM 2012; City of Great Falls v Young (Young III) 211 Mont 13, 686  
19 P.2d 185, 119 LRRM 2682. In ULP 43-81, William Converse v Anaconda Deer Lodge  
20 County and ULP 44-81 James Forsman v Anaconda Deer Lodge County, August 13,  
21 1982, the Board of Personnel Appeals adopted National Labor Relations Board precedent  
22 set forth in Collyer Insulated Wire, 192 NLRB 387, 77 LRRM 1931, deferring certain unfair  
23 labor practice proceedings to an existing negotiated grievance/arbitration procedure.  
24

25  
26 Deferral is appropriate in this case given the nature of the charge and further given that  
27 both the National Labor Relations Board and the Board of Personnel Appeals have  
28 recognized the value in doing so when it comes to questions of contract interpretation.  
29

### 30 **III. Recommended Order**

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32 It is hereby recommended that the above matter be deferred to arbitration. To eliminate  
33 the risk of prejudice to any party the Board of Personnel Appeals retains jurisdiction over  
34 this matter for the purpose of entertaining an appropriate and timely motion for further  
35 consideration upon a proper showing that either the dispute has not, within a reasonable  
36 time, been resolved pursuant to the parties' negotiated grievance/arbitration procedure; or  
37 the grievance/arbitration proceedings have not been fair and regular.  
38

39  
40 Dated this 19th day of December, 2013.  
41

42  
43 BOARD OF PERSONNEL APPEALS  
44

45  
46  
47 By: \_\_\_\_\_  
48 John Andrew  
49 Investigator  
50

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2  
3 SPECIAL NOTICE

4 Exceptions to this Recommended Order may be filed within twenty (20) days of service  
5 thereof. If no exceptions are filed, this Recommended Order shall become the Order of  
6 the Board of Personnel Appeals. Address exceptions to the Board of Personnel Appeals,  
7 P.O. Box 201503 Helena, Montana 59620-1503.  
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10 \* \* \* \* \*

11 CERTIFICATE OF MAILING  
12

13 I, \_\_\_\_\_, do hereby certify that a true and correct  
14 copy of this document was mailed to the following on the \_\_\_\_\_ day of December  
15 2013, postage paid and addressed as follows:  
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17  
18 CRAIG DAVIS  
19 IUOE LOCAL 400  
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